



## The Office of Secretary of State

*Brian P. Kemp*  
SECRETARY OF STATE

*Vincent R. Russo*  
General Counsel

### NOTICE (SEC-2011-07)

**RE: Repeal of Chapter 590-4-7 entitled “Advertising and Internet Marketing”  
Consisting of Rules 590-4-7-.01 to 590-4-7-.02**

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 10-5-70 and 50-13-4, notice is hereby given that the Commissioner of Securities of the Office of the Georgia Secretary of State, (hereinafter “Commissioner”) proposes to repeal chapter 590-4-7 *Advertising and Internet Marketing*, consisting of Rules 590-4-7-01 and 590-4-7-.02.

Attached with this notice is an exact copy of each proposed rule to be repealed. The rules are being repealed under the authority of O.C.G.A. §§ 10-5-70 and 10-5-74. The Commissioner finds that the repeal of said rules is necessary and in the public interest because the rules were promulgated under the Georgia Securities Act of 1973, which the General Assembly repealed in its entirety and replaced pursuant to Act 528 during the 2008 legislative session.

The Assistant Commissioner, in accordance with O.C.G.A. § 10-5-70(f), shall consider the repeal of the proposed rules at 12:30 p.m., on November 17, 2011, in Room 810, Suite 802 West Tower at 2 Martin Luther King, Jr. Drive, S.E., Atlanta, Georgia 30334.

Copies of this notice and exact copy of each proposed rule for repeal are available for review on the Securities Divisions’ web page at <http://www.sos.ga.gov/securities>. Interested persons may submit data, views or arguments in writing to the Commissioner. The Commissioner must receive all comments regarding the proposed repeal of the above-referenced Rules from interested persons no later than 5:00 p.m. on November 15, 2011. Written comments must be sent to: Commissioner of Securities, Securities Division, 2 Martin Luther King, Jr. Drive, S.E., 802 West Tower, Atlanta, Georgia 30334. Written comments may be sent via facsimile to (404) 656-0513, or submitted electronically to [SECRules@sos.ga.gov](mailto:SECRules@sos.ga.gov). Please reference “SEC-2011-07” on all comments.

For further information, please contact Tom Zagorsky at (404) 463-0344.

This 13th day of October, 2011.

A handwritten signature in blue ink, reading "Vincent Russo", is written over a horizontal line.

Vincent R. Russo  
Interim Assistant Commissioner of Securities

**590-4-7-.01 Securities Offerings on the Internet.**

(1) The Commissioner will take no action to enforce the securities registration provisions of the Act in connection with an offering on the Internet where:

(a) The offer is made while the offering is registered in this State or is made pursuant to an exemption from such registration; or

(b) The Internet Offer:

1. Indicates, directly or indirectly, that the securities are not being offered to the residents of this State; and

2. Is not otherwise specifically directed to any person in this State by, or on behalf of, the issuer of securities.

(2) No sales of securities shall be made in this State pursuant to an offering on the Internet to any person in this State unless:

(a) Such securities are subject to an effective registration statement under the Act;

(b) The securities or transaction(s) is(are) exempt under Code Section 10-5-8 or Code Section 10-5-9, respectively; or

(c) The securities are "federal covered securities," as defined in Code Section 10-5-2, that has been properly notice filed in Georgia with the Commissioner.

(3) The offers for sale and sales of securities by means of an Internet offering are subject to the anti-fraud and other applicable sections of the Act. Any offering involving a material misstatement or omission of facts or fraud is subject to regulatory enforcement action by the Commissioner.

(4) For purposes of this Rule, the following terms are defined as following:

(a) Internet: The Internet, the World Wide Web, and similar proprietary or common carrier electronic systems; and

(b) Internet Communication: A communication made on the Internet that is directed generally to anyone, including residents of Georgia, having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods.

Authority O.C.G.A. Secs.10-5-10, 44-3-3, 44-3-6.

**590-4-7-.02 Internet Advertising by Dealers, Limited Dealers, Salespersons, Limited Salespersons, Investment Advisers, or Investment Adviser Representatives.**

(1) ~~A dealer, limited dealer, salesperson, limited salesperson, investment adviser, or investment adviser representative who uses the Internet to distribute information on available securities, products, and/or services through communications directed generally to anyone having access to the Internet shall not be deemed to be offering for sale or selling securities and/or transacting business in Georgia for purposes of Code Section 10-5-3, based solely on that fact, if the following conditions are observed:~~

~~(a) The Internet communication contains a legend that clearly states that:~~

~~1. the dealer, limited dealer, salesperson, limited salesperson, investment adviser, or investment adviser representative in question may not offer for sale or sell securities and/or transact business in Georgia unless registered, exempted from such registration, or not required to be registered; and~~

~~2. follow-up, individualized responses to persons in Georgia by such persons that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, will not be made absent compliance with the appropriate registration requirements, or an applicable exemption or exclusion;~~

~~(b) The Internet communication contains a mechanism including, without limitation, technical “firewalls” or other implemented policies and procedures, designed reasonably to ensure that prior to any direct communication with prospective customers or clients in Georgia, the dealer, limited dealer, salesperson, limited salesperson, investment adviser, or investment adviser representative is first registered in Georgia or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a dealer, limited dealer, salesperson, limited salesperson, investment adviser, or investment adviser representative registered with the Commissioner from any applicable Georgia securities registration requirement;~~

~~(c) The Internet communication does not involve either effecting, or attempting to effect, transactions in securities, or the rendering of personalized investment advice for compensation in Georgia, but is limited to the dissemination of general information on securities, products, and services; and~~

~~(d) In the case of a securities salesperson, limited salesperson, or investment adviser representative:~~

~~1. the name of the dealer, limited dealer or investment adviser with whom the salesperson, limited salesperson, or investment adviser representative is affiliated is prominently disclosed within the Internet communication;~~

~~2. the dealer, limited dealer, or investment adviser with whom the salesperson, limited salesperson, or investment adviser representative is associated is responsible for reviewing and approving the content of any Internet communication;~~

~~3. the dealer, limited dealer, or investment adviser with whom the salesperson, limited salesperson or investment adviser representative is associated first authorizes in writing the Internet communication; and~~

~~4. in disseminating information through the Internet communication, the salesperson, limited salesperson, or investment adviser representative acts within the scope of the authority granted by the dealer, limited dealer, or investment adviser.~~

~~(2) This Rule extends to a dealer, limited dealer, salesperson, limited salesperson, investment adviser, or investment adviser representative's Georgia registration requirements only, and does not excuse compliance with applicable securities registration, antifraud, or related provisions.~~

~~(3) Nothing in this Rule shall be construed to affect the activities of any dealer, limited dealer, salesperson, limited salesperson, investment adviser, or investment adviser representative that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvements Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (1996), as amended.~~

~~(4) For purposes of this Rule, the following terms are defined as following:~~

~~(a) Internet: The Internet, the World Wide Web, and similar proprietary or common carrier electronic systems; and~~

~~(b) Internet Communication: A communication made on the Internet that is directed generally to anyone, including residents of Georgia, having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods.~~

~~Authority O.C.G.A. Secs. 10-5-3, 10-5-10.~~